

November 1, 2023

VIA ECF

Magistrate Judge Nathanael Cousins
United States District Court for the Northern District of California
San Jose Courthouse, Courtroom 5 – 4th Floor
280 South 1st Street
San Jose, CA 95113

Re: Motion to Compel Third Parties Doug Crisman and Morgan Lewis & Bockius LLP to Respond to Subpoena; 5:23-mc-80201

Dear Magistrate Judge Cousins:

We write jointly with an update on actions taken by the parties since the Court's *Order As Modified Approving Joint Stipulation re: Motion to Compel Third Parties Doug Crisman and Morgan Lewis & Bockius LLP to Respond to Subpoena*. Dkt. 8.

On September 26, 2023, Doug Crisman and Morgan Lewis & Bockius LLP presented Doug Crisman for deposition on behalf of himself individually and Morgan Lewis & Bockius LLP beginning at 11:00 a.m. Pacific time. The parties were able to complete the first 4 hours and 44 minutes of deposition before Mr. Crisman had to adjourn the deposition early to attend to a personal emergency that arose that morning. Petitioners KioSoft Technologies, LLC and TechTrex, Inc. did not learn of Mr. Crisman's scheduling constraints until after the deposition had commenced.

On September 29, 2023, the parties filed a *Joint Stipulation re: Motion to Compel Third Parties Doug Crisman and Morgan Lewis & Bockius LLP to Respond to Subpoena* asserting that the parties were "working . . . to schedule a date to complete [the deposition of Douglas Crisman and Morgan Lewis & Bockius LLP]" and requesting that the Court continue the hearing on the Motion to Compel then set for October 11, 2023. Dkt. 7.

Magistrate Judge Nathanael Cousins
November 1, 2023

On October 2, 2023, the Court entered an *Order As Modified Approving Joint Stipulation re: Motion to Compel Third Parties Doug Crisman and Morgan Lewis & Bockius LLP to Respond to Subpoena*, which, in relevant part, continued the hearing on the Motion to Compel from October 11, 2023, to November 8, 2023, at 11:00 a.m. and required the parties to file a joint updated letter brief not to exceed 6 pages, due November 1, 2023. *See* Dkt. No. 8.

On October 12, 2023, counsel for Petitioners requested Mr. Crisman's availability to schedule the remaining approximately 2.5 hours of deposition. Due to trial and pre-planned travel schedules of counsel and the witness, Petitioners and Respondents agreed to resume the deposition on November 20, 2023.

Petitioners' Position

Having agreed with Respondents that Mr. Crisman will appear on November 20, 2023, for the remaining 2 hours and 16 minutes of deposition testimony, Petitioners intend and expect to conclude his deposition that day. Accordingly, Petitioners believe that continuing the hearing on the Motion to Compel from November 8, 2023, to December 8, 2023, or to the next available date thereafter on the Court's calendar, would be prudent. Such a continuance would allow the parties to conclude the deposition and, hopefully, resolve all issues relating to the subpoena, which would obviate the need for a hearing altogether.

Respondents' Position

Respondents have complied with the subpoenas and continue to work with Petitioners to complete the deposition of Doug Crisman and Morgan Lewis. Upon completion of the deposition on November 20, 2023, Petitioners should withdraw the motion to compel and move to dismiss this matter.

Magistrate Judge Nathanael Cousins
November 1, 2023

Summary

The Parties jointly agree and respectfully request that the Court continue the hearing on the Motion to Compel from November 8, 2023, to December 8, 2023, or to the next available date thereafter on the Court's calendar. This request is without prejudice to Petitioners and Respondents seeking a further continuance of the hearing on the Motion to Compel.

Respectfully submitted,



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